

#### Sec. 53314. Index of collective bargaining costs

The Bureau of Labor Statistics shall compile an index of collective bargaining costs reflecting the average annual change in wages and benefits put into effect for employees covered by collective bargaining agreements, with equal weight given to changes affecting employees in the transportation industry (excluding the offshore maritime industry) and to changes affecting employees in private nonagricultural industries other than transportation. The index shall be based on the information regularly used by the Bureau of Labor Statistics in compiling its regularly published statistical series on wage and benefit changes arrived at through collective bargaining. That information shall remain confidential.

#### Sec. 53315. Foreign wage computation

(a) Consideration and Availability of Information.--In making a foreign wage cost computation, the Secretary of Transportation shall consider all relevant information presented in writing by a contractor and all foreign wage cost information collected at the Secretary's request. The foreign cost information shall be made available to an interested contractor, unless the Secretary finds that disclosure of the information will prevent the Secretary from collecting information in the future.

(b) Foreign Manning Determinations.--The foreign manning determined for a vessel type for a base period may not be redetermined until the beginning of a new base period.

#### Sec. 53316. Subsidy payments

(a) Wage Subsidies.--A wage subsidy is payable monthly for voyages completed during the month, on a contractor's certification that the subsidized vessels were in authorized service during the month. The Secretary of Transportation shall prescribe procedures for calculating and paying a subsidy on items of expense that are included in collective bargaining costs but not included in the daily rate because they are unpredictably timed.

(b) Insurance, Maintenance, and Repair Subsidies.--Ninety percent of the amount of a subsidy for insurance, maintenance and repair, and subsistence of officers and crews is payable monthly for voyages completed during the month on the basis of the subsidy estimated to have accrued for the voyages. Before making an estimated payment, the Secretary may require reasonable security from the contractor to assure a refund of any overpayment. The contractor and the Secretary shall audit the voyage accounts as soon as practicable after the estimated payment. The remaining 10 percent of the estimated subsidy shall be payable after the audit.

#### Sec. 53317. Authority to pay additional subsidy

If the Secretary of Transportation finds, after consultation with the Secretary of State, that the subsidy provided under this chapter for a particular route in foreign commerce is inadequate to offset the effect of governmental assistance paid to foreign competitors, the Secretary of Transportation may grant an additional subsidy the Secretary considers necessary to offset that assistance.

## SUBCHAPTER 111--CONTRACTS AND ADMINISTRATION OF SUBSIDIES

### Sec. 53321. Contracts for paying subsidies

(a) **General Authority.**--If the Secretary of Transportation approves a subsidy application under this chapter, the Secretary may make a contract with the applicant for the payment of an operating-differential subsidy for vessel operations in an essential service and in cruise service authorized under subchapter IV of this chapter, for a period not exceeding 20 years.

(b) **Contract Provisions.**--The contract shall include--

(1) provisions required by this chapter; and

(2) other provisions consistent with this chapter, including a performance bond with approved sureties, that the Secretary may require to carry out the objectives and policy of this subtitle.

### Sec. 53322. Required contract provisions

(a) **General Requirements.**--Each contract for an operating-differential subsidy shall include the following provisions:

(1) The amount of the future payments to the contractor shall be subject to review and readjustment, but not more than once a year, at the instance of the Secretary of Transportation or the contractor. If the Secretary and the contractor cannot agree on a readjustment, the Secretary shall hold a hearing on the record and then decide what readjustment is fair and reasonable and in the public interest. The testimony in the hearing shall be transcribed and filed in the office of the Secretary. The Secretary's decision shall be based on changes affecting expense items included in the contract and on other conditions affecting shipping. The Secretary shall implement the decision by a written order, accompanied by a written statement of the Secretary's findings of fact.

(2) If the Secretary decides that a change in an essential service for which an operating-differential subsidy is provided is necessary to carry out this subtitle, the Secretary may make the change and readjust the payments to the contractor under the procedure described in paragraph (1) of this subsection.

(3) If a contractor believes that it cannot maintain and operate its vessels in an essential service for which an operating-differential subsidy is provided, with a reasonable profit on investment, the contractor may apply to the Secretary for a modification or rescission of the contract to maintain the essential service. If the Secretary finds that the contractor's assertions are correct, the Secretary shall modify or rescind the contract and allow the contractor to withdraw its vessels from the essential service on a date named by the Secretary. On that date, the Secretary shall stop any further payments of the operating-differential subsidy, and the contractor shall be discharged from any further obligation under the contract.

(4) The contractor shall conduct its vessel operations in an essential service in an efficient and economical manner.

(5) The subsidy shall be reduced, under terms and in amounts decided by the Secretary, for any period that a subsidized vessel is laid-up.

(6) An officer serving under a license issued by the Coast Guard who is a member of the Naval Reserve shall wear on the officer's uniform a special distinguishing insignia approved by the Secretary of the Navy.

(7) A licensed officer who is otherwise qualified may not be discriminated against because of the officer's failure to qualify as a member of the Naval Reserve.

(8) Except in an emergency, a contractor receiving a subsidy for repairs shall perform those repairs in the United States.

(9) The contractor and each affiliate, domestic agent, subsidiary, and holding company connected with, or controlling or controlled by, the contractor, shall keep its records on the maintenance, operation, and servicing of the vessels, services, routes, and lines covered by the contract in the form and under regulations prescribed by the Secretary.

(10) The contractor and each affiliate, domestic agent, subsidiary, and holding company connected with, or controlling or controlled by, the contractor, shall file, on notice from the Secretary, balance sheets, profit and loss statements, and other statements of financial operations, special reports, and memoranda of facts and transactions that the Secretary believes affect the financial results in, the performance of, or transactions or operations under, the contract.

(11) The Secretary may examine the records of each person referred to in paragraphs (9) and (10) of this subsection when the Secretary considers it desirable.

(12) On the willful failure of a person described in paragraphs (9) and (10) of this subsection to comply with the contract provisions required by paragraphs (9)-(11) of this subsection, the Secretary may rescind the contract. On rescission, the United States Government shall be relieved of further liability under the contract.

(13) As far as practicable, officer living quarters are separate from quarters for crew members.

(14) Licensed officers and unlicensed members of the crew are entitled to make complaints or recommendations to the Secretary if the complaint or recommendation is filed directly with the Secretary or with the immediate superior officer, who is required to forward a complaint or recommendation with remarks to the Secretary or the authorized representative of the respective collective bargaining agency.

(15) A member of the crew other than a licensed officer is not allowed to wear a uniform with officer-identifying insignia (uniform stripes, decoration, or other insignia of gold braid or woven gold or silver material).

(16) To the extent practicable, a contractor receiving a subsidy for the subsistence of officers and crews shall use, for that subsistence, only articles, materials, and supplies that are grown, produced, or manufactured in the United States as defined in section 401(h) of the Tariff Act of 1930 (19 U.S.C. 1401(h)), except when it is necessary to purchase supplies outside the United States to enable the passenger vessel to continue and complete its voyage.

(b) Additional Passenger Vessel Requirements.--In addition to the provisions required by subsection (a) of this section, each contract for an operating-differential subsidy for a passenger vessel shall provide that the contractor shall conduct its passenger services in an efficient and economical manner.

(c) Investigation and establishment of wage and manning scales and working conditions--(1) The Secretary shall investigate the employment and wage conditions in ocean-going shipping and, after the investigation and appropriate hearings, incorporate in the contracts authorized under this chapter minimum manning scales and wage scales, and minimum working conditions, for the officers and crews employed on each type of vessel receiving subsidy.

(2) After minimum manning, wage scales, and working conditions are adopted, a change may be made by the Secretary only after the Secretary provides a hearing, and public notice of the hearing, of all interested parties, under rules the Secretary prescribes. Duly elected representatives of the organizations certified as the proper collective bargaining agencies have the right to represent the employees who are members of their organizations at the hearing.

(3) A contractor receiving a subsidy shall post and keep posted in a conspicuous place on each vessel operated by the contractor a printed copy of the minimum manning and wage scales, and working conditions prescribed and applicable to the vessel.

(4) An increase in the operating expenses of a subsidized vessel because of a change in the manning, wage scales, and working conditions specified under this section shall be added to the subsidy previously authorized for the vessel.

#### Sec. 53323. Sale or assignment of subsidy contracts

(a) Prohibitions.--Except with the written consent of the Secretary of Transportation, a contractor may not--

(1) sell, assign, or transfer an interest in an operating-differential subsidy contract in any way; or

(2) make an arrangement under which the maintenance, management, or operation of the vessel, service, route, or line is to be performed by another person.

(b) Other Person To Be Bound.--If the Secretary consents to an arrangement under subsection (a)(2) of this section, the arrangement shall provide that the person undertaking the maintenance, management, or operation agrees to be bound by the contract, this subtitle, and regulations prescribed under this subtitle.

(c) Authority To Modify and Rescind Contracts.--If a contractor knowingly violates subsection (a) of this section or if the operation of a vessel, service, route, or line passes out of the direct control of a contractor by receivership or bankruptcy proceedings, the Secretary may modify or rescind the contract without further liability by the United States Government. Only the Secretary may decide the purposes for which payments made by the Secretary under the contract will be expended.

#### Sec. 53324. Contractor's option to suspend subsidy contract

(a) Suspension.--A contractor receiving an operating-differential subsidy may elect, for any vessel covered by the subsidy contract, to suspend the contract and related statutory and contractual restrictions (except those related to the domestic intercoastal or coastwise service), including any agreement providing for the replacement of vessels, if--

(1) the vessel is less than 10 years old;

(2) the suspension period is at least 12 months;

(3) the contractor's financial condition is maintained at a level acceptable to the Secretary of Transportation; and

(4) the owner agrees to pay the Secretary, on terms prescribed by the Secretary, an amount determined by--

(A) dividing--

(i) the part of the suspension period during which the vessel is operated in a type of preferred commerce from which a subsidized vessel would otherwise be excluded by law or contract; by

(ii) the economic life of the vessel; and

(B) multiplying the amount determined under subclause (A) of this clause by the construction differential subsidy paid by the Secretary.

(b) Reinstatement.--A contractor making an election under this section is entitled to full reinstatement of the suspended contract on request.

Sec. 53325. Restriction on payment during temporary operation in domestic commerce

An operating-differential subsidy may not be paid for the operation of a vessel during the period of a temporary transfer to domestic commerce under section 53525(b) of this title.

Sec. 53326. Withholding payments to defaulting contractor

The Secretary of Transportation shall withhold the payment of an operating-differential subsidy from a contractor in default in any payment due on a construction loan, a vessel sales mortgage note, or any other obligation due the United States Government. The Secretary shall apply the amount withheld to the default.

Sec. 53327. Supervising salaries of defaulting contractor

If a contractor receiving an operating-differential subsidy is in default on a mortgage, note, purchase contract, or other obligation to the Secretary of Transportation, or has not maintained in a manner satisfactory to the Secretary all of the reserves provided for in this subtitle, the Secretary may supervise the number and pay of the officers and employees of the contractor.

Sec. 53328. Transfer of vessels to foreign registry on default by the United States Government

(a) Transfer Applications and Approval.--If a contractor believes that the United States Government has defaulted on, or cancelled, a contract for an operating-differential subsidy without just cause, the contractor may apply to the Secretary of Transportation for permission to transfer a vessel covered by the contract to foreign registry. The

application must be in writing and state and explain the contractor's allegations. The contractor shall be given an opportunity for a hearing on the record within 20 days after filing the application. Within a reasonable time after the testimony, if any, is transcribed and filed with the Secretary, the Secretary shall issue an order granting or denying the application.

(b) Judicial Review.--If the application is denied, the contractor may obtain review of the Secretary's order in the United States Court of Appeals for the District of Columbia Circuit. A petition for review must be filed within 20 days after the date of the Secretary's order. The clerk of the court immediately shall send a copy of the petition to the Secretary. The Secretary then shall file in the court the record on which the order is based, as provided in section 2112 of title 28. When the petition is filed, the court has exclusive jurisdiction to decide whether the default or cancellation was without just cause, and to affirm or set aside the Secretary's order. The court's judgment affirming or setting aside the order is final.

(c) When Transfer Is Effective.--(1) A transfer of a vessel to foreign registry under this section is not effective until--

(A) the expiration of 90 days from the date of the Secretary's order, or if the order is reviewed, the date of the court's judgment; and

(B) any indebtedness to the Government or to any citizen of the United States, secured by the vessel, has been paid or discharged.

(2) During this 90-day period, the Secretary may--

(A) purchase the vessel, with the contractor's consent, at the contractor's cost plus the cost of capital improvements, minus 4 percent annual depreciation and the actual depreciated cost of capital improvements; or

(B) reinstate the contract and adjust or settle the default.

#### SUBCHAPTER IV--SPECIAL PROVISIONS ON CRUISE SERVICE

##### Sec. 53341. Approval of cruise service

(a) General Authority.--On the application of an operator for approval of a specific cruise, the Secretary of Transportation may approve the cruise after--

(1) giving notice and an opportunity for comment to any other operator of a vessel of the United States that may be affected; and

(2) deciding that the cruise will not substantially adversely affect an existing operator's service performed with a passenger vessel of United States.

(b) Limitation on Advance Approval.--The Secretary's approval may not be given more than 2 years in advance of the beginning of the cruise.

Sec. 53342. Domestic cruise service by subsidized passenger vessels

The Secretary of Transportation may authorize a passenger vessel covered by an operating-differential subsidy contract to provide domestic service between specified ports when the vessel is on a voyage in an essential service in the foreign commerce of the United States without reduction of the operating-differential subsidy and the partial payback of the construction-differential subsidy for operating in domestic commerce, if the Secretary finds that the domestic service will not result in a substantial deviation from or adversely affect the service, route, or line for which the operating-differential subsidy is paid.

Sec. 53343. Restrictions on incidental cruise service operations

(a) Application.--This section applies to a vessel--

(1) being operated on cruises; or

(2) authorized under this subchapter to provide domestic passenger service when on a voyage in an essential service in the foreign commerce of the United States.

(b) Transportation of Cargo.--(1) A vessel subject to this section may not transport cargo, except between those ports allowed on its regular service under its contract. However, the vessel may transport--

(A) passengers' luggage;

(B) mail if required by law; and

(C) cargo and mail between ports with the consent of--

(i) the Secretary of Transportation, if the transportation is not in direct competition with a vessel of the United States offering berth service between those ports; or

(ii) the next scheduled vessel of the United States, if the transportation is in direct competition with a vessel offering that service.

(2) The consent under paragraph (1)(C)(ii) of this subsection may not be withheld unreasonably, as decided by the Maritime Administrator.

(c) Stopping at Other Domestic Ports.--A vessel subject to this section may stop at other domestic ports only for the same purpose and time as allowed for a foreign vessel

transporting passengers who board at a domestic port. However, a vessel on a cruise may-

(1) end that cruise at a different port or coast from where it began; and

(2) load or unload passengers at other domestic ports--

(A) without any required consent if not involved in transportation in domestic offshore commerce in competition with a passenger vessel of the United States offering berth service in that commerce; or

(B) with the consent of the competing vessel if involved in that transportation.

#### Sec. 53344. Deviations from subsidized service for domestic passenger cruises

Domestic passenger cruises authorized under this subchapter are in addition to the voyages an operator is entitled to make on its regular service, route, or line, including approved deviations within the general area of its essential service. If a deviation does not affect the adequacy of service, a subsidy under this part is not to be adjusted because of the deviation.

#### Sec. 53345. Nonapplication of CDS payback and ODS reduction

The partial payback of construction-differential subsidy required by section 53525 of this title, the reduction in operating-differential subsidy required by section 53305 of this title, and the restriction on payment of operating-differential subsidy required by section 53325 of this title, do not apply to cruises or domestic services authorized under this subchapter.

### SUBCHAPTER V--ADDITIONAL RESTRICTIONS AND PENALTIES

#### Sec. 53351. Employing another person as managing or operating agent

(a) Prohibitions.--Except with the written consent of the Secretary of Transportation, a contractor having an operating-differential subsidy contract may not--

(1) employ another person as the managing or operating agent of the contractor; or

(2) charter, for operation by another person, a vessel on which an operating-differential subsidy is to be paid.

(b) Application of Chapter to Person in Violation.--A person operating a vessel chartered in violation of subsection (a) of this section is subject to this chapter, including limitations on profits and wages.

(c) Penalties.--(1) A willful violation of subsection (a) of this section is a breach of the operating-differential subsidy contract. On determining that a violation has occurred, the Secretary may rescind the contract.

(2) A person willfully violating subsection (a) of this section shall be fined under title 18, imprisoned for at least one year but not more than 5 years, or both.

(3) The Secretary may consider a person convicted of violating subsection (a) of this section ineligible to receive any benefits under this part or a charter under chapter 595 of this title for 5 years after the conviction.

#### Sec. 53352. Operating competing foreign vessels

(a) Definition.--In this section, "related party" means--

(1) a holding company, subsidiary, affiliate, or associate of a contractor under this chapter; and

(2) an officer, director, agent, or other executive of the contractor or an entity named in clause (1) of this subsection.

(b) Prohibition.--Except as otherwise provided in this section, a contractor receiving an operating-differential subsidy, or a related party, may not own, charter, operate, or act as an agent or broker for a foreign vessel in competition with a vessel of the United States providing a service the Secretary decides is essential under section 50103 of this title.

(c) Waiver.--Under special circumstances and for good cause shown, the Secretary of Transportation may waive subsection (b) of this section for a contractor for a specified period of time.

(d) Nonapplication.--Subsection (a) of this section does not prevent a contractor receiving assistance under this chapter or chapter 531 of this title, or a related party, from--

(1) owning, chartering, or operating a foreign vessel on a voyage or segment of a voyage that does not call at a port in the United States;

(2) owning, chartering, or operating a foreign vessel in line haul service between the United States and a foreign port if--

(A) the foreign vessel was owned, chartered, or operated by, or is a replacement for a foreign vessel that was owned, chartered, or operated by, that owner or operator or a holding company, subsidiary, affiliate, or associate of that owner or operator, on October 8, 1996;

(B)(i) the owner or operator, for each additional foreign vessel other than a time chartered vessel, first has applied to have that vessel covered by an operating agreement under chapter 531 of this title; and

(ii) the Secretary has not awarded an operating agreement for that vessel within 90 days after the application was filed; or

(C) the vessel has been placed under foreign documentation as provided in section 57102 of this title, is registered under an effective United States-controlled foreign flag, and is available to be requisitioned by the Secretary of Transportation under chapter 573 of this title;

(3) owning, chartering, or operating foreign bulk cargo vessels that are operated in foreign-to-foreign service or the foreign commerce of the United States;

(4) chartering or operating foreign vessels that are operated only as replacement vessels for United States vessels or vessel capacity made available to the Secretary of Defense under section 53104 of this title; or

(5) entering into a time or space charter or other cooperative agreement for a foreign vessel or acting as an agent or broker for a foreign vessel.

#### Sec. 53353. Operating in domestic service

(a) Definition.--In this section, "related party" means--

(1) a holding company, subsidiary, affiliate, or associate of a contractor under this chapter; and

(2) an officer, director, agent, or other executive of the contractor or an entity named in clause (1) of this subsection.

(b) Prohibition.--Except as otherwise provided in this section, a contractor may not be paid an operating-differential subsidy if the contractor or a related party--

(1) owns, charters, or operates a vessel engaged in the domestic intercoastal or coastwise service; or

(2) owns a pecuniary interest in a person that owns, charters, or operates a vessel in the domestic intercoastal or coastwise service.

(c) General Waiver Authority.--A contractor may apply to the Secretary of Transportation for a waiver of subsection (b) of this section. Before deciding on the

waiver, the Secretary shall give the contractor and other interested persons an opportunity for a hearing. The Secretary may not grant the waiver if the Secretary finds it would--

(1) result in unfair competition to a person operating a vessel only in the domestic intercoastal or coastwise service; or

(2) be inconsistent with the objectives and policy of this subtitle.

(d) Waiver for Continuous Operations Since 1935.--The Secretary shall grant the waiver without requiring further proof that the public interest and convenience will be served, and without further proceedings about the competition in the route or type of commerce for which the waiver is requested, if the contractor, a related party, or a predecessor in interest--

(1)(A) was in bona-fide operation in 1935 as a water common carrier in coastwise trade over a route or in a type of commerce for which the waiver is requested; or

(B) if engaged in providing seasonal service only, was in bona-fide operation in 1935 during the season ordinarily covered by its operation; and

(2) has continued in that operation since 1935, except for interruptions of service over which it had no control.

(e) Limitation and Penalties.--(1) If a waiver is granted under this section, the contractor or a related party may not divert anything of value used in subsidized foreign commerce operations into coastwise trade operations.

(2) A person violating paragraph (1) of this subsection shall be fined under title 18, imprisoned for at least one year but not more than 5 years, or both.

(3) The Secretary may consider a person convicted of violating paragraph (1) of this subsection ineligible to receive any benefits under this part or a charter under chapter 595 of this title for 5 years after the conviction.

Sec. 53354. Preferences to cargo in which contractor has interest

(a) Prohibition.--A contractor receiving an operating-differential subsidy may not give a preference to cargo in which the contractor has an interest involving its ownership, purchase, or sale.

(b) Penalties.--(1) A person violating subsection (a) of this section shall be fined under title 18, imprisoned for at least one year but not more than 5 years, or both.

(2) The Secretary of Transportation may consider a person convicted of violating subsection (a) of this section ineligible to receive any benefits under this part or a charter under chapter 595 of this title for 5 years after the conviction.

#### Sec. 53355. Concerted discriminatory activities

(a) Prohibition.--A contractor receiving an operating-differential subsidy may not have an agreement with another water carrier, or engage in a practice in concert with another water carrier, that is unjustly discriminatory or unfair to another citizen of the United States operating a water common carrier employing only vessels of the United States in an essential service to or from a United States port.

(b) Government Payment Prohibited.--A payment out of amounts of the United States Government may not be made to a contractor that has violated subsection (a) of this section.

(c) Civil Action.--A person injured in its business or property by a violation of this section may bring a civil action in the district court of the United States for the district in which the defendant resides, is found, or has an agent. If the person prevails, the person shall be awarded--

(1) 3 times the actual damages; and

(2) costs, including a reasonable attorney's fee.

#### Sec. 53356. Transfer of inactive passenger vessels to foreign ownership

(a) Secretary's Approval.--Notwithstanding any other law or a prior contract with the United States Government, a vessel previously operated as a passenger vessel under an operating-differential subsidy contract and in inactive or lay-up status, except the steamship Independence and the steamship United States, may be transferred to foreign ownership and documented under the laws of a foreign country, with the approval of the Secretary of Transportation.

(b) Approval Requirements.--The Secretary may approve a transfer under this section only if--

(1) the Secretary approves the purchaser, the price, and the terms of payment;

(2) payment is made of existing debt and private obligations related to the vessel;

(3) the seller makes an agreement with the Secretary that an amount equal to the net proceeds received from the sale in excess of existing obligations and expenses incident to the sale shall be committed within a reasonable period (not to

exceed 12 months after receipt) and be used as equity capital to build new vessels that the Secretary decides are to be built to carry out the objectives and policy of this subtitle; and

(4) the purchaser makes an agreement with the Secretary, binding on the purchaser and later owners of the vessel and running with the title to the vessel, that--

(A) the vessel will not transport passengers or cargo in competition (as decided by the Secretary) with a passenger vessel of the United States for 2 years after the date the transferred vessel goes into operation;

(B) the vessel will be made available to the Government, and just compensation will be paid, as provided in chapter 573 of this title;

(C) the purchaser will comply with any additional terms the Secretary imposes under chapter 571 of this title; and

(D) the purchaser will provide a surety bond, in an amount and with a surety satisfactory to the Secretary, to secure performance of this agreement.

(c) Appointment of Agent and Specific Performance.--(1) In an agreement under subsection (b)(4) of this section, the purchaser shall irrevocably appoint a corporate agent in the United States to receive service of process in an action to enforce the agreement.

(2) A district court of the United States may order specific performance of an agreement described in subsection (b)(3) or (4) of this section.

## CHAPTER 535--CONSTRUCTION-DIFFERENTIAL SUBSIDIES

### SUBCHAPTER I--GENERAL

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### SUBCHAPTER I--GENERAL

#### Sec. 53501. Definition

In this chapter, "construction" includes outfitting and equipping.

#### Sec. 53502. Subsidies for new construction

(a) Applications.--A proposed vessel purchaser that is a citizen of the United States, or a shipyard of the United States, may apply to the Secretary of Transportation for a construction-differential subsidy to assist in the construction of a new vessel to be used in the foreign commerce of the United States.

(b) Required Findings.--Before approving an application under this section, the Secretary must find that--

(1) the plans and specifications call for a new vessel that will--

(A) satisfy the requirements, and aid in the promotion and development, of the foreign commerce of the United States; and

(B) be suitable for use by the United States Government for national defense or military purposes in time of war or national emergency;

(2) if the applicant is the proposed vessel purchaser, the applicant has the ability, experience, financial resources, and other qualifications necessary to operate and maintain the proposed new vessel; and

(3) the granting of the subsidy is reasonably calculated to carry out effectively the objectives and policy of this subtitle.

(c) Preferences.--The Secretary may give preference to an application under this section that--

(1) tends to result in a smaller construction-differential subsidy; or

(2) proposes the construction of a vessel of higher transport capability and productivity.

#### Sec. 53503. Subsidies for reconstruction and reconditioning

(a) Applications.--A citizen of the United States or a shipyard of the United States may apply to the Secretary of Transportation for a construction-differential subsidy to assist in the reconstruction or reconditioning of a vessel to be used in the foreign commerce of the United States.

(b) Approval Requirements.--The Secretary may approve an application under this section only in exceptional cases, after the Secretary has made a thorough study and a formal determination that the proposed reconstruction or reconditioning is reasonably calculated to carry out effectively the objectives and policy of this subtitle.

(c) Applicable Provisions and Conditions.--A subsidy under this section is subject to the same provisions (to the extent applicable) as a subsidy under section 53502 of this title and additional conditions the Secretary may prescribe by regulation.

#### Sec. 53504. Sealift readiness program

A construction-differential subsidy may not be granted for a vessel unless it is offered for enrollment in a sealift readiness program approved by the Secretary of Defense.

#### Sec. 53505. Certification by the Secretary of the Navy

The Secretary of Transportation shall submit the plans and specifications for a proposed vessel to the Secretary of the Navy for review and suggestions for changes to ensure that the vessel will be suitable for economical and speedy conversion into a naval or military auxiliary or otherwise suitable for use by the United States Government in time of war or national emergency. If the Secretary of the Navy approves the plans and specifications as submitted or as changed, the Secretary of the Navy shall certify the approval to the Secretary of Transportation.

Sec. 53506. Subsidy amounts

(a) Determining Subsidy Amounts.--(1) Subject to paragraph (2) of this subsection, the amount of a construction-differential subsidy shall be equal to the excess of--

(A) the bid of the shipbuilder constructing the proposed vessel (excluding the cost of national defense features); over

(B) the fair and reasonable estimate of cost, as determined by the Secretary of Transportation, of constructing that type vessel under similar plans and specifications (excluding national defense features) in a foreign shipyard that the Secretary considers a fair and representative example for this comparative determination.

(2) The construction-differential subsidy may not be more than 50 percent of the cost of constructing, reconstructing, or reconditioning the vessel (excluding the cost of national defense features).

(3) The cost of national defense features shall be paid in addition to the construction-differential subsidy.

(b) Foreign Cost Estimate.--(1) The Secretary shall recompute the foreign cost estimate annually unless the Secretary decides that there has been a significant change in shipbuilding market conditions.

(2) The Secretary shall publish notice of intention to compute or recompute a foreign cost estimate and give interested persons an opportunity to submit written comments. The Secretary's determination of a foreign cost estimate shall be accompanied by a concise explanation of its basis.

(c) Negotiated Contracts.--Notwithstanding section 53511 of this title, if the Secretary finds that the construction-differential subsidy would be more than allowed under the 50 percent limit of subsection (a)(2) of this section, the Secretary may--

(1) negotiate with any bidder, even if not the lowest bidder; and

(2) make a contract with that bidder for the construction, reconstruction, or reconditioning of the vessel in a domestic shipyard at a cost that will reduce the construction-differential to 50 percent or less.

SUBCHAPTER II--CONSTRUCTION OF VESSELS

Sec. 53511. Competitive bidding

(a) General Authority.--If the Secretary of Transportation approves an application for a construction-differential subsidy and the Secretary of the Navy certifies approval of the plans and specifications, the Secretary of Transportation may solicit bids for the construction of the vessel according to the approved plans and specifications. A construction contract shall be awarded on the basis of competitive bidding after sufficient advertisement. The Secretary may disapprove any bid.

(b) Supporting Information.--A bid submitted to the Secretary must be accompanied by detailed estimates on which it is based. The Secretary may require the bid to be accompanied by the bids of subcontractors or by other relevant information. The Secretary shall keep all bids and related information on file until disposed of as provided by law.

(c) Award to Lowest Responsible Bidder.--The Secretary may approve the bid of the lowest responsible bidder if the Secretary decides the bid is reasonable. To be considered responsible, a bidder must have the ability, experience, financial resources, equipment, and other qualifications necessary to perform the proposed contract properly.

(d) Negotiated Price.--Notwithstanding subsection (a) of this section, the Secretary may accept a price for construction of a vessel negotiated between a shipyard and a proposed vessel purchaser if--

(1) the shipyard and the proposed vessel purchaser submit backup cost details and evidence that the negotiated price is reasonable;

(2) the Secretary finds that the negotiated price is fair and reasonable; and

(3) the shipyard agrees to give the Comptroller General the right, during the contract period and for 3 years after final payment, to examine records of the shipyard and its subcontractors related to the negotiation or performance of a contract or subcontract negotiated under this chapter, and agrees to include a provision for this examination in its subcontracts.

(e) Reporting Evidence of Collusion.--If the Secretary has reason to believe that any bidding is collusive, the Secretary shall report the evidence to--

(1) the Attorney General; and

(2)(A) the President of the Senate and the Speaker of the House of Representatives, if Congress is in session; or

(B) the Secretary of the Senate and the Clerk of the House of Representatives, if Congress is not in session.

#### Sec. 53512. Construction contracts

(a) Contract Price Payments.--If an approved bid under section 53511(a)-(c) of this title is accepted by the proposed vessel purchaser, the Secretary of Transportation may make a contract with the successful bidder for the--

(1) construction of the proposed vessel; and

(2) payment by the Secretary to the shipbuilder of the contract price on terms to be agreed on in the contract.

(b) Alternative Payments.--(1) If a qualified purchaser under this chapter desires to purchase a vessel to be constructed with a subsidy under this chapter, the Secretary, instead of making a contract to pay the entire cost of the vessel, may make a contract to pay the shipyard only the amount of the construction-differential subsidy and the cost of national defense features. The construction-differential subsidy and the cost of national defense features shall be based on the lowest responsible domestic bid unless the vessel is constructed under a negotiated price (in which event the subsidy and cost of national defense features shall be based on the negotiated price).

(2) A construction-differential subsidy may be paid under this subsection only if the contract or other arrangements contain the provisions provided in this title to protect the interests of the United States as the Secretary of Transportation deems necessary.

#### Sec. 53513. Shipyards and materials

(a) Shipyards.--Construction for which a subsidy is provided under this chapter may be performed only in a shipyard in a State of the United States or in Puerto Rico.

(b) Materials.--(1) To the extent practicable, the shipbuilder, subcontractors, materialmen, and suppliers shall use only articles, materials, and supplies that are grown, produced, or manufactured in the United States as defined in section 401(h) of the Tariff Act of 1930 (19 U.S.C. 1401(h)).

(2) If the Secretary of Transportation makes a written decision (including a concise explanation of its basis) that compliance with paragraph (1) of this subsection will delay unreasonably the completion of a vessel beyond its contract delivery date, the Secretary may waive, to the extent necessary to prevent the delay, compliance with paragraph (1) for the construction of nonmajor components of the hull and superstructure and material used in their construction.

#### Sec. 53514. Construction in navy yards

(a) General Authority.--To provide employment for citizens of the United States, the Secretary of Transportation may have a vessel constructed, at not more than the actual cost, in a navy yard of the United States under regulations prescribed by the Secretary of Transportation and the Secretary of the Navy, if--

(1) the Secretary of Transportation does not receive any bids for the construction of the vessel or decides that the bids received from privately-owned shipyards of the United States are collusive, excessive, or unreasonable; and

(2) a citizen of the United States agrees to purchase the vessel as provided in section 53521 of this title.

(b) Use of Construction Fund.--The Secretary of Transportation may pay for a vessel constructed under this section with amounts from the Secretary's construction fund.

(c) Sale of Vessels.--The Secretary of Transportation may sell a vessel constructed under this section to a citizen of the United States for its reasonable value, but not less than the cost of the vessel minus the equivalent of the construction-differential subsidy determined under this chapter. The sale shall comply with other provisions of this chapter.

#### Sec. 53515. Allocation of contracts to maintain shipbuilding mobilization base

(a) Shipyards Surveys.--At least once a year, the Secretary of Transportation, with the advice of and in coordination with the Secretary of the Navy, shall survey existing privately-owned shipyards capable of merchant vessel construction, or review available information about those shipyards if the information is adequate, to decide whether their capabilities for merchant vessel construction, including facilities and skilled personnel, provide an adequate mobilization base at strategic points for national defense and national emergency.

(b) Allocations.--To correct an existing or impending inadequacy in the shipyard mobilization base at a strategic point, the Secretary of Transportation may allocate construction work under this chapter to particular shipyards in a way the Secretary considers fair to all sections of the United States after considering the benefits of standardized construction, the conditions of unemployment, and the reasonable needs of all shipyards. In allocating the work, the Secretary, after obtaining competitive bids under this chapter, may negotiate with the bidders and other shipbuilders and make a contract for the work with any shipbuilder at a price the Secretary considers reasonable. A contract under this subsection is subject to other provisions of this chapter, except those related to the awarding of contracts to the lowest responsible bidder which are inconsistent with this subsection.

(c) Payment of Difference Between Contract and Lowest Bid.--If the Secretary of Transportation makes a contract under this section at a price greater than the lowest responsible bid that otherwise would be accepted, the Secretary shall pay the difference as part of the cost of national defense and not as part of the construction-differential subsidy. If the Secretary makes a contract at a price lower than the lowest responsible bid that otherwise would be accepted, the construction-differential subsidy shall be computed on the basis of the contract price instead of the bid.

(d) Reimbursement for Excess Inspection, Supervision, and Ballast Voyage Expenses.--(1) If, because of an allocation under this section, the purchaser of a vessel incurs expenses for inspection and supervision of the vessel during construction, and for a

delivery ballast voyage, in excess of the estimated expenses the purchaser would have incurred for the same services if the vessel had been constructed by the lowest responsible bidder, the Secretary of Transportation shall reimburse the purchaser for the excess without interest, less one-half of any gross income the purchaser receives that is allocable to the delivery ballast voyage minus one-half of the extra expenses incurred to produce the gross income. The reimbursement is not part of the construction-differential subsidy.

(2)(A) Subsection (d)(1) does not apply to a vessel constructed under section 53533 of this title. If a vessel is constructed under section 53533, the Secretary of Transportation shall reduce the price of the vessel by the amount of excess expense incurred as measured under paragraph (1), less one-half of any gross income the purchaser receives that is allocable to the delivery ballast voyage minus one-half of the extra expenses incurred to produce the gross income.

(B) The vessel owner shall not be compensated under this paragraph for excess vessel delivery costs in an amount greater than the expenses that would have been incurred in delivering the vessel from the shipyard at which it was built to the shipyard of the lowest responsible bidder. If as a result of such allocation, the expenses the purchaser incurs with respect to such services are less than the expenses that would have been incurred for such services if the vessel had been constructed by the lowest responsible bidder, the purchaser shall pay to the Secretary of Transportation an amount equal to such reduction and, if the vessel was built with the aid of construction-differential subsidy, such payment shall not be considered a reduction of the construction-differential subsidy. The ballast delivery voyage shall be deemed terminated--

(i) at the port where the vessel begins loading in the case of a vessel that is not to receive operating-differential subsidy; and

(ii) when the vessel begins loading at a United States port in an essential service in the case of a vessel that is to receive operating-differential subsidy.

### SUBCHAPTER III--SALE OF VESSELS

#### Sec. 53521. Sales contracts

(a) General Authority.--When the Secretary of Transportation makes a contract for the construction of a vessel under section 53512(a) of this title, the Secretary at the same time may make a contract for the sale of the vessel (on its completion) to--

(1) the applicant for the subsidy, if the applicant is the proposed vessel purchaser; or

(2) if the applicant is not the proposed vessel purchaser, another citizen of the United States that the Secretary decides has the ability, experience, financial

resources, and other qualifications necessary for the operation and maintenance of the vessel.

(b) Price.--The contract price of the vessel shall correspond to the estimated cost of building the vessel in a foreign shipyard, as determined by the Secretary of Transportation under this chapter.

(c) Payments by Purchaser.--(1) The contract shall require the purchaser to make cash payments to the Secretary of Transportation totaling at least 25 percent of the contract price of the vessel. These payments shall be made at the same time and in the same proportion as the payments the Secretary is required to make for the construction cost in the contract between the Secretary and the shipbuilder. At least once a year, the purchaser shall pay interest on those parts of the Secretary's payments to the shipbuilder that are chargeable to the purchaser's part of the price of the vessel (after deduction of the purchaser's cash payments) at a rate at least equal to--

(A) a rate determined by the Secretary of the Treasury based on the current average market yield on outstanding marketable obligations of the United States Government with remaining periods to maturity comparable to the average maturities of the contract loans, adjusted to the nearest one-eighth percent; plus

(B) an allowance the Secretary of Transportation considers adequate to cover administrative costs.

(2) The contract shall require the purchaser to pay the balance of the purchase price within 25 years after delivery of the vessel, in not more than 25 equal annual installments. The first installment shall be payable one year after the Secretary of Transportation delivers the vessel to the purchaser. Interest shall be paid on the unpaid balance of the purchase price at the annual rate applicable to payments that are chargeable to the purchaser's part of the price of the vessel.

(d) Prohibition on Restriction of Use.--The contract of sale, and the mortgage given to secure payment of the unpaid balance of the purchase price, may not restrict the lawful or proper use or operation of the vessel except to the extent expressly required by law.

#### Sec. 53522. Documentation and delivery of vessels

(a) Documentation.--When a shipbuilder completes construction of a vessel for which a subsidy is allowed under this chapter and delivers the vessel to the Secretary of Transportation, the Secretary shall document the vessel under chapter 121 of this title.

(b) Delivery.--At the time of documentation, or as soon after that time as practicable, the Secretary shall deliver the vessel to the purchaser with a bill of sale and warranty against liens as provided by the contract of sale between the Secretary and the purchaser.

(c) Execution of Mortgage.--On delivery of the vessel, the purchaser shall execute and deliver a first-preferred mortgage to the United States Government to secure payment of any amounts owed by the purchaser.

(d) Documentation Period.--The vessel shall remain a documented vessel for at least 25 years or as long as any principal or interest on the purchase remains due the Government, whichever is longer.

#### Sec. 53523. Mortgage on purchase of certain passenger vessels

(a) Eligible Vessels.--With the approval of the Secretary of Transportation, payment of amounts owed for the purchase of a passenger vessel under this chapter may be secured only by a first-preferred mortgage if the vessel--

(1) is of at least 10,000 gross tons;

(2) has a designed speed of at least 18 knots;

(3) has accommodations for at least 200 passengers; and

(4) is approved by the Secretary of Defense as being desirable for national defense.

(b) Mortgage Terms.--(1) With the approval of the Secretary of Transportation, the preferred mortgage may provide that, if the purchaser complies with all the provisions of the mortgage other than those requiring payment of principal and interest--

(A) the only recourse against the purchaser under the mortgage and any notes secured by the mortgage will be repossession of the vessel by the United States Government and assignment of insurance claims; and

(B) the purchaser's obligation will be discharged by the surrender of the vessel and all interest in the vessel to the Government in the condition described in paragraph (2) of this subsection.

(2)(A) On surrender, the vessel must be--

(i) free and clear of other liens and encumbrances;

(ii) in class; and

(iii) in as good order and condition (ordinary wear and tear excepted) as when acquired by the purchaser.

(B) To the extent covered by insurance, a deficiency related to the requirements named in subparagraph (A) of this paragraph may be satisfied by assignment of the purchaser's insurance claims to the Government.

Sec. 53524. Provision for purchase or requisition of vessels by the United States Government

(a) Valuation Requirement.--Each contract of sale under this chapter shall provide that if the United States Government acquires ownership of the vessel through purchase or requisition, the owner shall be paid the greater of--

(1) the value of the vessel, but not more than--

(A) the actual depreciated cost of construction and capital improvements (excluding the cost of national defense features); minus

(B) the depreciated amount of construction-differential subsidy paid for the vessel; or

(2) the reasonable scrap value of the vessel as determined by the Secretary of Transportation.

(b) Finality and Depreciation Value.--The Secretary's determination under subsection (a) of this section is final. In computing the depreciated value of the vessel, depreciation shall be computed on each vessel based on the schedule adopted by the Internal Revenue Service for income tax purposes.

(c) Provision To Run With Title.--The contract provision described in subsection (a) of this section shall run with the title to the vessel and be binding on each owner of the vessel.

Sec. 53525. Agreement to operate vessels in foreign commerce

(a) Allowable Voyages.--Each owner of a vessel for which a construction-differential subsidy has been paid shall agree in writing that--

(1) the vessel will be operated only--

(A) in foreign commerce;

(B) on a round-the-world voyage;

(C) on a round voyage from the west coast of the United States to a European port that includes an intercoastal port of the United States;

(D) on a round voyage from the Atlantic coast of the United States to the Orient that includes an intercoastal port of the United States; or

(E) on a voyage in foreign commerce on which the vessel may stop at Hawaii or an island territory or possession of the United States; and

(2) if the vessel is operated in domestic commerce on any of those voyages, the owner will pay annually to the Secretary of Transportation an amount determined by--

(A) dividing the gross revenue from domestic commerce by the gross revenue from all voyages completed during the prior year; and

(B) multiplying the amount determined under subclause (A) of this clause by 4 percent of the construction-differential subsidy paid for the vessel.

(b) Temporary Transfers to Other Service.--The Secretary may agree in writing to the temporary transfer of a vessel to a service not covered by the agreement under subsection (a) of this section, for periods of not more than 6 months in each year, if--

(1) the Secretary decides that the temporary transfer is appropriate to carry out this subtitle; and

(2) the owner agrees to pay the Secretary, on terms the Secretary prescribes, an amount determined by--

(A) dividing the temporary period of domestic commerce by the entire economic life of the vessel; and

(B) multiplying the amount determined under subclause (A) of this clause by the construction-differential subsidy paid for the vessel.

#### Sec. 53526. Expiration of requirements and restrictions

Notwithstanding any other provision of law or contract, all requirements and restrictions under sections 53522-53525 and 53325 of this title applicable to a liner vessel constructed, reconstructed, or reconditioned with the aid of construction-differential subsidy terminate at the end of the 25-year period beginning on the date of the original delivery of the vessel from the shipyard.

### SUBCHAPTER IV--MISCELLANEOUS

#### Sec. 53531. National defense features

(a) General Authority.--The Secretary of Transportation may construct, purchase, lease, acquire, store, maintain, sell, or otherwise dispose of national defense features intended for installation on vessels. The Secretary may install or remove national defense features on a vessel that--

(1) is in the National Defense Reserve Fleet;

(2) is requisitioned, purchased, or chartered under a Presidential proclamation for national security or defense purposes;

(3) serves as security for the guarantee of an obligation by the Secretary under part D of this subtitle; or

(4) is the subject of an agreement between its owner and the Secretary to install or remove national defense features.

(b) Title.--Title to a national defense feature that the Secretary decides is not to be incorporated permanently in a vessel is not affected by its installation or removal unless otherwise transferred under this part.

(c) Review by Secretary of Navy.--The Secretary of Transportation shall submit the plans and specifications for national defense features, and the proposals for their acquisition, storage, use, or disposition, to the Secretary of the Navy for review and suggestions for changes to ensure that the features will be suitable for use by the United States Government in time of war or national emergency. The Secretary of the Navy shall certify to the Secretary of Transportation any approval of the plans, specifications, or proposals as submitted or as changed.

#### Sec. 53532. United States Government purchase of replaced vessels

(a) General Authority.--If the Secretary of Transportation makes a contract under this chapter for the construction and sale of a new vessel to replace a vessel being operated in foreign or domestic commerce, the Secretary may buy the replaced vessel from the owner if--

(1) the Secretary decides that the vessel should be replaced because it is obsolete or inadequate for successful operation in that commerce; and

(2) the vessel has been documented under the laws of the United States for at least 10 years before its purchase.

(b) Purchase Price.--The purchase price shall be reasonable. However, the price may not be more than the cost to the owner (or any former owner) of the replaced vessel-

(1) plus the actual cost previously expended for any reconditioning;  
minus

(2) reasonable and proper depreciation based on not more than a 25-year life of the vessel.

(c) Price To Be Applied to Purchaser's Construction Cost.--The owner of the replaced vessel must agree to apply the purchase price to the purchaser's part of the construction cost of the new vessel.

(d) Bond Requirement.--The owner of a vessel replaced under this section shall execute a bond, with one or more approved sureties, conditioned on indemnifying the United States Government for any loss resulting from an existing lien against the vessel.

Sec. 53533. Limited applicability of construction-differential subsidy program to vessels constructed for domestic commerce

(a) Assistance Applications and Approval.--(1) A citizen of the United States may apply to the Secretary of Transportation for assistance in the construction of a new vessel to be operated in foreign or domestic commerce (except a vessel engaged only in transporting property on inland rivers and canals).

(2) If the Secretary approves the application, the vessel may be constructed under this chapter, but without a construction-differential subsidy. The Secretary shall pay the cost of national defense features incorporated in the vessel.

(b) Minimum Payment on Delivery.--(1) The purchaser of a vessel constructed under this section shall be required to pay the Secretary at the time of delivery at least 12.5 percent of the cost of the vessel (excluding the cost of national defense features) if the vessel is--

(A) designed to be of at least 3,500 gross tons and capable of sustained speed of at least 10 knots;

(B) a passenger vessel operated only on the inland rivers and waterways that is designed to be of at least 1,000 gross tons and capable of sustained speed of at least 8 knots;

(C) a ferry operated only in point-to-point transportation that is designed to be of at least 75 gross tons and capable of a sustained speed of at least 8 knots;

(D) an ocean-going towing vessel of at least 2,500 horsepower;

(E) an ocean-going barge of at least 2,500 gross tons; or

(F) a vessel of at least 2,500 horsepower designed to be capable of sustained speed of at least 40 knots.

(2) For a vessel constructed under this section but not described in paragraph (1) of this subsection, the purchaser shall be required to pay the Secretary at the time of delivery at least 25 percent of the cost of the vessel (excluding the cost of national defense features).

(c) Payment of Balance.--The purchaser shall be required to pay the balance of the purchase price within 25 years after delivery of the vessel, in not more than 25 equal annual installments. Interest shall be paid on the unpaid balance of the purchase price at a rate at least equal to--

(A) a rate determined by the Secretary of the Treasury based on the current average market yield on outstanding marketable obligations of the United States Government with remaining periods to maturity comparable to the average maturities of the contract loans, adjusted to the nearest one-eighth percent; plus

(B) an allowance the Secretary of Transportation considers adequate to cover administrative costs.

(d) Security for Unpaid Balance.--The unpaid balance of the purchase price shall be secured by a preferred mortgage and otherwise secured as the Secretary of Transportation may require except that, in the case of a passenger vessel constructed under this section which has the tonnage, speed, passenger accommodations, and other characteristics set forth in section 53323 of this title, the unpaid balance may, with the approval of the Secretary of Transportation, be secured as provided in section 53323, and the obligation of the purchaser of the vessel shall be satisfied and discharged as provided in that section, notwithstanding this or any other provision of law.

## PART D--VESSEL AND FACILITY FINANCING PROGRAMS

### CHAPTER 541--GENERAL

Sec.

54101. Definitions.

54102. Limits on guarantee programs.

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Sec. 54101. Definitions

In this part--

(1) "actual cost" of a vessel on a specified date means the total, as determined by the Secretary, of--

(A) amounts paid by or for the account of the obligor on or before that date for the construction, reconstruction, or reconditioning of the vessel; and

(B) amounts the obligor remains obligated to pay for the construction, reconstruction, or reconditioning of the vessel.

(2) "construction", "reconstruction", and "reconditioning" include designing, inspecting, outfitting, and equipping.

(3) "depreciated actual cost" of a vessel means--

(A) if the vessel was not reconstructed or reconditioned, the actual cost of the vessel depreciated on a straightline basis over the useful life of the vessel as determined by the Secretary, not to exceed 25 years from the date of delivery by the builder; or

(B) if the vessel was reconstructed or reconditioned, the total of--

(i) the actual cost of the vessel depreciated on a straightline basis from the date of delivery by the builder to the date of the reconstruction or reconditioning, using the original useful life of the vessel, and from the date of the reconstruction or reconditioning, using a useful life of the vessel determined by the Secretary; and

(ii) any amount paid or obligated to be paid for the reconstruction or reconditioning, depreciated on a straightline basis using a useful life of the vessel determined by the Secretary.

(4) "eligible export vessel" means a vessel (except a fishing vessel or ocean thermal energy conversion facility or plantship) that is constructed, reconstructed, or reconditioned in the United States for use in world-wide commerce and that will, on delivery or redelivery, be documented under the laws of a country other than the United States.

(5)(A) "fishery facility" means, subject to subclause (B) of this clause--

(i) for operations on land, a structure or appurtenance thereto designed for the unloading and receiving from vessels, the

processing, the holding pending processing, the distribution after processing, or the holding pending distribution, of fish from a fishery, the land necessary for the structure or appurtenance, and equipment for use with the structure or appurtenance that is necessary for performing a function referred to in this subclause (i);

(ii) for operations not on land, a vessel built in the United States and used for, equipped to be used for, or of a type normally used for, the processing of fish; or

(iii) for aquaculture, including operations on land or elsewhere, a structure or appurtenance thereto designed for aquaculture, the land necessary for the structure or appurtenance, equipment for use with the structure or appurtenance that is necessary for performing a function referred to in this subclause (iii), and a vessel built in the United States and used for, equipped to be used for, or of a type normally used for, aquaculture.

(B) A structure, appurtenance, land, equipment, or vessel is a fishery facility under subclause (A) of this clause only if it is owned by--

(i) an individual who is a citizen of the United States; or

(ii) an entity qualifying as a citizen of the United States under section 171 of this title that is at least 75 percent owned (as described in section 171) by citizens of the United States.

(6) "fishing vessel" has the meaning given that term by section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802), and any reference in this part to a vessel designed principally for commercial use in the fishing trade or industry is deemed to be a reference to a fishing vessel.

(7) "mortgage" includes--

(A) a preferred mortgage as defined in section 31301 of this title; and

(B) a mortgage on a vessel that will become a preferred mortgage when filed or recorded under chapter 313 of this title.

(8) "obligation" means an instrument of indebtedness issued for a purpose described in section 54304 of this title, except--

(A) an obligation issued by the Secretary under section 54333 of this title to satisfy a default; and

(B) an obligation eligible for investment of money under section 54321(d) of this title.

(9) "obligee" means the holder of an obligation.

(10) "obligor" means a party primarily liable for payment of the principal of or interest on an obligation.

(11) "ocean thermal energy conversion facility or plantship" means an at-sea facility or vessel, whether mobile, floating unmoored, moored, or standing on the seabed, that uses temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes--

(A) equipment installed on the facility or vessel to use the electricity or other form of energy to produce, process, refine, or manufacture a product;

(B) a cable or pipeline used to deliver the electricity, freshwater, or the product to shore; and

(C) other associated equipment and appurtenances of the facility or vessel to the extent they are located seaward of the high water mark.

(12) "Secretary" means--

(A) the Secretary of Commerce to the extent this part applies to fishing vessels and fishery facilities; and

(B) the Secretary of Transportation to the extent this part applies to other vessels and to general shipyard facilities.

(13) "vessel" means any type of vessel, whether in existence or being built, including--

(A) a cargo vessel;

(B) a passenger vessel;

(C) a combination cargo and passenger vessel;

(D) a tanker;

(E) a tug or towboat;

(F) a barge;

(G) a dredge;

(H) a floating drydock with a capacity of at least 35,000 lifting tons and a beam of at least 125 feet between the wing walls;

(I) an oceanographic research vessel;

(J) an instruction vessel;

(K) a pollution treatment, abatement, or control vessel;

(L) a fishing vessel whose ownership satisfies the citizenship requirements for documenting vessels to operate in coastwise trade, as specified by chapter 561 of this title, under section 171 of this title; and

(M) an ocean thermal energy conversion facility or plantship that is or will be documented under chapter 121 of this title.

#### Sec. 54102. Limits on guarantee programs

(a) General Limitations.--The total unpaid principal amount of obligations guaranteed under this part and outstanding at one time may not be more than \$12,000,000,000. Of that amount--

(1) \$850,000,000 shall be limited to obligations related to fishing vessels and fishery facilities guaranteed under this chapter; and

(2) \$3,000,000,000 shall be limited to obligations related to eligible export vessels guaranteed under chapter 548 of this title.

(b) Additional Limitations.--Additional limitations may not be imposed on new commitments to guarantee loans for any fiscal year, except for amounts established in advance by annual authorization laws.

(c) Eligibility Based on Vessel Type.--A vessel eligible for a guarantee under this part may not be denied eligibility because of its type.

#### Sec. 54103. Guarantee program limit based on risk factors

(a) Definition.--In this section, "cost" has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(b) Limitation.--The Secretary may not guarantee or make a commitment to guarantee an obligation under this part after the total amount available to the Secretary

under appropriations laws for the cost of loan guarantees is considered to be reduced to zero under this section.

(c) Reduction of Total Amount Available.--(1) The Secretary shall consider the total amount referred to in subsection (b) of this section to be reduced by the estimated cost to the United States Government of each guarantee made by the Secretary.

(2) The estimated cost to the Government of a guarantee made by the Secretary under this part is deemed to be the amount calculated by multiplying--

(A) the amount guaranteed for the obligation; by

(B) the applicable subsidy rate under subsection (d) of this section.

(d) Risk Category and Subsidy Rate System.--(1) For obligations guaranteed under this part, the Secretary shall establish a system of risk categories that categorizes the relative risk for the following risk factors:

(A) If applicable, the country risk for each eligible export vessel financed or to be financed by an obligation.

(B) The period for which an obligation is guaranteed or to be guaranteed.

(C) The amount of an obligation guaranteed or to be guaranteed in relation to the total cost of the project financed or to be financed by the obligation.

(D) The financial condition of an obligor or applicant for a guarantee.

(E) If applicable, other guarantees related to the project.

(F) If applicable, the projected employment of each vessel or equipment to be financed with an obligation.

(G) If applicable, the projected market that will be served by each vessel or equipment to be financed with an obligation.

(H) The collateral provided for a guarantee for an obligation.

(I) The management and operating experience of an obligor or applicant for a guarantee.

(J) Whether a guarantee under this part is or will be in effect during the construction period of the project.

(2) For each risk category established under paragraph (1) of this subsection, the Secretary shall determine a subsidy rate, expressed as a percentage of the amount guaranteed, that equals the cost of obligations in the category.

(3) Before guaranteeing an obligation under this part, the Secretary shall apply the risk factors to place an obligation in a risk category under paragraph (1) of this subsection.

#### Sec. 54104. Fees for investigating applications

(a) General Requirements.--The Secretary shall charge and collect from the obligor fees the Secretary considers reasonable for--

(1) investigating an application for a loan or guarantee;

(2) appraising property offered as security for a loan or guarantee;

(3) issuing a commitment;

(4) providing services related to an escrow fund authorized under subchapter III of this chapter; and

(5) inspecting property during construction, reconstruction, or reconditioning.

(b) Total Fee Limitation.--The total fees under this section may not be more than .5 percent of the original principal amount of the obligations to be loaned or guaranteed.

#### Sec. 54105. Guarantee fees

(a) Regulations.--Subject to this section, the Secretary shall prescribe regulations to assess a fee for guaranteeing an obligation under this part.

(b) Computation of Fee.--(1) The amount of the fee for a guarantee under this part shall be equal to the sum of the amounts determined under paragraph (2) of this subsection for the years in which the guarantee is in effect.

(2) The amount referred to in paragraph (1) of this subsection for a year in which the guarantee is in effect is the present value of the amount calculated under paragraph (3) of this subsection. To determine the present value, the Secretary shall apply a discount rate determined by the Secretary of the Treasury considering current market yields on outstanding obligations of the United States Government having periods to maturity comparable to the period to maturity for the guaranteed obligation.

(3) The amount referred to in paragraph (2) of this subsection shall be calculated by multiplying--

(A) the estimated average unpaid principal amount of the obligation that will be outstanding during the year (excluding the average amount, except interest, on deposit during the year in an escrow fund under subchapter III of this chapter); by

(B) the fee rate set under paragraph (4) of this subsection.

(4) To set the fee rate referred to in paragraph (3)(B) of this subsection, the Secretary shall establish a formula that--

(A) considers the security provided for the guaranteed obligation; and

(B) is a sliding scale based on the creditworthiness of the obligor, using--

(i) the lowest allowable rate under paragraph (5) of this subsection for the most creditworthy obligors; and

(ii) the highest allowable rate under paragraph (5) of this subsection for the least creditworthy obligors.

(5) The fee rate set under paragraph (4) of this section shall be--

(A) for a delivered vessel or equipment, at least .5 percent and not more than one percent; and

(B) for a vessel to be constructed, reconstructed, or reconditioned or equipment to be delivered, at least .25 percent and not more than .5 percent.

(c) When Fee Collected.--A fee for the guarantee of an obligation under this part shall be collected not later than the date on which an amount is paid on the obligation.

(d) Financing the Fee.--A fee paid under this section is eligible to be financed under this part and shall be included in the actual cost of the obligation guaranteed.

(e) Not Refundable.--A fee paid under this section is not refundable. However, an obligor shall receive credit for the amount paid for the remaining term of the obligation if the obligation is refinanced and guaranteed under this part after the refinancing.

#### Sec. 54106. Management of funds in United States Treasury

(a) Loan Guarantees by the Secretary of Transportation.--(1) The Secretary of Transportation shall account for payments and disbursements involving obligations guaranteed under the authority of this Part and not subject to the Federal Credit Reform Act of 1990 (2 U.S.C. 661a) in an account in the Treasury of the United States entitled the Federal Ship Financing Fund Liquidating Account.

(2) The Secretary of Transportation shall account for payments and disbursements involving obligations guaranteed under the authority of this Part and subject to the Federal Credit Reform Act of 1990 (2 U.S.C. 661a) in a separate account in the Treasury of the United States entitled the Federal Ship Financing Guaranteed Loan Financing Account.

(b) Loan Guarantees by the Secretary of Commerce.--(1) The Secretary of Commerce shall account for payments and disbursements involving obligations guaranteed under the authority of this Part and not subject to the Federal Credit Reform Act of 1990 (2 U.S.C. 661a) in a separate account in the Treasury of the United States established for this purpose.

(2) The Secretary of Commerce shall account for payments and disbursements involving obligations guaranteed under the authority of this Part and subject to the Federal Credit Reform Act of 1990 (2 U.S.C. 661a) in a separate account in the Treasury of the United States established for this purpose.

(c) Direct Loans by the Secretary of Commerce.--(1) The Secretary of Commerce shall account for payments and disbursements involving direct loans made under the authority of chapter 549 of this title in a separate account in the Treasury of the United States established for this purpose.

#### Sec. 54107. Deposit Fund

(a) Establishment of Deposit Fund--There is established in the United States Treasury a deposit fund for purposes of this section. The Secretary of Transportation may, under an agreement under subsection (b), deposit into and hold in the deposit fund cash belonging to an obligor to serve as collateral for a guarantee under this title made with respect to the obligor.

(b) Agreement--(1) The Secretary of Transportation and an obligor shall enter into a reserve fund or other collateral account agreement to govern the deposit, withdrawal, retention, use, and reinvestment of cash of the obligor held in the deposit fund established by subsection (a).

(2) The agreement shall contain--

(A) terms and conditions required under this section;

(B) terms that grant to the United States a security interest in all amounts deposited into the deposit fund; and

(C) any additional terms considered by the Secretary of Transportation to be necessary to protect fully the interests of the United States.

(c) Investment--(1) The Secretary of Transportation may invest and reinvest any part of the amounts in the deposit fund established by subsection (a) in obligations of the United States, with such maturities as ensure that amounts in the deposit fund will be available as required for purposes of agreements under subsection (b).

(2) Cash balances of the deposit fund in excess of current requirements shall be maintained in a form of uninvested funds, and the Secretary of the Treasury shall pay interest on these funds.

(d) Withdrawals--(1) The cash deposited into the deposit fund established by subsection (a) may not be withdrawn without the consent of the Secretary of Transportation.

(2) Subject to paragraph (3), the Secretary of Transportation may pay any income earned on cash of an obligor deposited into the deposit fund under the terms of the agreement with the obligor under subsection (b).

(3) The Secretary of Transportation may retain and offset any or all of the cash of an obligor in the deposit fund, and any income realized of the balance, as part of the Secretary's recovery against the obligor in case of a default by the obligor on an obligation.

## CHAPTER 543--VESSEL FINANCING GUARANTEES

### SUBCHAPTER I--GUARANTEE OF OBLIGATIONS

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## SUBCHAPTER I--GUARANTEE OF OBLIGATIONS

### Sec. 54301. Guarantees

(a) **General Authority.**--On terms the Secretary may prescribe, the Secretary may guarantee or make a commitment to guarantee the payment of the unpaid principal of and interest on an obligation eligible to be guaranteed under this part. However, the Secretary of Commerce may not undertake a new guarantee or make a new commitment to guarantee under this part after October 10, 1996.

(b) **Full Faith and Credit.**--The full faith and credit of the United States Government is pledged to pay the principal and interest of a guarantee made under this part, including interest (as may be provided for in the guarantee) accruing between the date of default under a guaranteed obligation and the payment in full of the guarantee.

(c) **Incontestability.**--A guarantee of, or commitment to guarantee, an obligation under this part is conclusive evidence of the eligibility of the obligation for the guarantee. The validity of a guarantee or commitment to guarantee made under this part is incontestable.

### Sec. 54302. Finding of responsible obligor

The Secretary may guarantee or make a commitment to guarantee an obligation under this part only if the Secretary finds that the obligor is responsible and has the ability, experience, financial resources, and other qualifications necessary for the adequate operation and maintenance of each vessel that will be security for the guarantee.

### Sec. 54303. Security interest

(a) **General Authority.**--The Secretary may guarantee an obligation under this part only if the obligor conveys or agrees to convey to the Secretary a security interest the Secretary considers necessary to protect the interest of the United States Government.

(b) **Multiple Vessels and Types of Security.**--The security interest may relate to more than one vessel and may consist of more than one type of security. If the security interest relates to more than one vessel, the obligation may have the latest maturity date allowable under section 54305(a)(3) of this title for any of the vessels used as security for the guarantee. However, for all obligations related to the security interest, the Secretary may require payments of principal prior to maturity that the Secretary considers necessary to maintain adequate security for the guarantee.

### Sec. 54304. Eligible purposes of obligations

(a) General.--To be eligible for a guarantee under this chapter, an obligation must aid in any of the following:

(1) Financing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, or reconditioning of a vessel designed principally for research, or for commercial use (A) in coastwise trade, as specified by chapter 561 of this title, (B) in foreign commerce as defined in section 109(b) of this title for purposes of chapter 535 of this title, or (C) as a floating drydock in the construction, reconstruction, reconditioning, or repair of vessels, except that a guarantee under this clause (1) may not be made more than one year after delivery of the vessel (or redelivery if the vessel was reconstructed or reconditioned) unless the proceeds of the obligation are used to finance the construction, reconstruction, or reconditioning of a vessel or of facilities or equipment related to marine operations.

(2) Financing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, reconditioning, or purchase of a vessel owned only by citizens of the United States and designed principally for research, or for commercial use in the fishing industry.

(3) Financing the purchase, reconstruction, or reconditioning of a vessel or fishery facility--

(A) for which an obligation was guaranteed under this chapter; and

(B) that, under subchapter III of this chapter--

(i) is a vessel or fishery facility for which an obligation was accelerated and paid; or

(ii) was sold at foreclosure begun by the Secretary.

(4) Financing any part of the repayment to the United States Government of any amount of a construction-differential subsidy paid for a vessel under this subtitle.

(5) Refinancing an existing obligation (regardless of whether guaranteed under this chapter) issued for a purpose described in clause (1), (2), (3), or (4) of this section, including a short-term obligation incurred to obtain temporary capital with the intention of refinancing.

(6) Financing or refinancing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, reconditioning, or purchase of a fishery facility.

(7) Financing or refinancing (including reimbursement of an obligor for expenditures previously made for) the purchase of an individual fishing quota in accordance with section 303(d)(4) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853(d)(4)).

(b) Treatment of Certain Obligations.--An obligation guaranteed under subsection (a)(6) or (7) of this section shall be deemed to be an obligation guaranteed under this chapter that aids in financing the construction, reconstruction, reconditioning, or purchase of a vessel, except to the extent provisions of this chapter can apply only to vessels.

#### Sec. 54305. Contents of obligations

(a) General Requirements.--To be eligible for a guarantee under this part, an obligation must--

(1) provide for payments by the obligor satisfactory to the Secretary;

(2) provide for interest (exclusive of guarantee and service fees) at a rate not more than the annual rate on the unpaid principal that the Secretary decides is reasonable, considering the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary;

(3) have a maturity date satisfactory to the Secretary, but--

(A) not more than 25 years after the date of delivery of the vessel that is security for the guarantee; or

(B) if the vessel has been reconstructed or reconditioned, not more than the later of--

(i) 25 years after the date of delivery of the vessel; or

(ii) the remaining years of useful life of the vessel as determined by the Secretary; and

(4) provide, or a related agreement must provide, that if the vessel that is security for the guarantee is a delivered vessel, the vessel shall be--

(A) in class A-1, American Bureau of Shipping, or meet other classification standards acceptable to the Secretary, with every required certificate, including every marine inspection certificate of the Coast Guard or, in the case of an eligible export vessel, of the appropriate national flag authorities under a treaty, convention, or other international agreement to which the United States Government is a party, and with every outstanding requirement and recommendation necessary for class retention accomplished, unless the Secretary permits a deferment of

repairs necessary to meet those classification and certification requirements; and

(B) well equipped, in good repair, and in every respect seaworthy and fit for service.

(b) Provisions for Certain Passenger Vessels.--(1) With the Secretary's approval, if the vessel that is security for the guarantee is a passenger vessel having the tonnage, speed, passenger accommodations, and other characteristics described in chapter 535 of this title, an obligation guaranteed under this part or a related agreement may provide that--

(A) the only recourse against the obligor for payments under the guarantee will be repossession of the vessel by the Government and assignment of insurance claims; and

(B) the obligor's liability for payments under the guarantee will be discharged by the surrender of the vessel and all interest in the vessel to the Government in the condition described in paragraph (2) of this subsection.

(2)(A) On surrender, the vessel must be--

(i) free and clear of all liens and encumbrances except the security interest conveyed to the Secretary under this part;

(ii) in class; and

(iii) in as good order and condition (ordinary wear and tear excepted) as when acquired by the obligor.

(B) To the extent covered by insurance, a deficiency related to the requirements named in subparagraph (A) of this paragraph may be satisfied by assignment of the obligor's insurance claims to the Government.

(c) Other Provisions To Protect Security Interests.--An obligation guaranteed under this part and any related agreement must contain other provisions for the protection of the security interests of the Government (including acceleration, assumption, and subrogation provisions and the issuance of notes by the obligor to the Secretary), liens and releases of liens, payment of taxes, and other matters that the Secretary may prescribe.

#### Sec. 54306. Restrictions on the Secretary of Transportation

The Secretary of Transportation may not guarantee or make a commitment to guarantee an obligation unless the Secretary finds that the property or project for which

the obligation will be executed will be economically sound. In making that finding, the Secretary shall consider--

(1) the need in the particular segment of the maritime industry for new or additional capacity, including any impact on existing equipment for which a guarantee under this part is in effect;

(2) the market potential for the employment of the vessel over the life of the guarantee;

(3) projected revenues and expenses associated with employment of the vessel;

(4) any charter, contract of affreightment, transportation agreement, or similar agreement or undertaking relevant to the employment of the vessel;

(5) other relevant criteria; and

(6) for inland waterways, the need for technical improvements, including increased fuel efficiency or improved safety.

#### Sec. 54307. Restrictions on the Secretary of Commerce

(a) General Requirements.--The Secretary of Commerce may not guarantee or make a commitment to guarantee an obligation unless the Secretary finds, at or prior to the time the commitment is made or the guarantee becomes effective, that--

(1) the property or project for which the obligation will be executed will be economically sound; and

(2) for a fishing vessel, the purpose of the financing or refinancing is consistent with--

(A) the wise use of the fisheries resources and the development, advancement, management, conservation, and protection of the fisheries resources; or

(B) the need for technical improvements, including increased fuel efficiency or improved safety.

(b) Limitations Involving Used Vessels and Facilities.--The Secretary of Commerce may not guarantee or make a commitment to guarantee an obligation for the purchase of a used fishing vessel or used fishery facility unless the vessel or facility will be--

(1) reconstructed or reconditioned in the United States and will contribute to the development of the United States fishing industry; or

(2) used--

(A) in the harvesting of fish from an underused fishery; or

(B) for a purpose described in the definition of "fishery facility" in section 54101 of this title, related to an underused fishery.

(c) Minimum Principal Amount and Inclusion of Routine Minor Repair or Maintenance.--The Secretary of Commerce may not establish, as a condition of eligibility for a guarantee under this chapter, a minimum principal amount for an obligation covering the reconstruction or reconditioning of a fishing vessel or fishery facility. The reconstruction or reconditioning of a fishing vessel or fishery facility does not include the routine minor repair or maintenance of the vessel or facility.

#### Sec. 54308. Amount of obligations

(a) Percentage Limitations.--(1) Except as otherwise provided in this part, the principal amount of an obligation guaranteed under this part may not be more than 75 percent of the actual cost or depreciated actual cost, as determined by the Secretary, of the vessel that is security for the guarantee.

(2) For a fishing vessel or fishery facility, the principal amount of an obligation guaranteed under this part may not be more than 80 percent of the actual cost or depreciated actual cost. However, debt for the vessel or facility may not be placed through the Federal Financing Bank.

(3) The principal amount of an obligation guaranteed under this part may not be more than 87.5 percent of the actual cost or depreciated actual cost if--

(A) the size and speed of the vessel are approved by the Secretary;

(B) the vessel is or would have been eligible for a construction-differential subsidy under section 53533 of this title (or would have been eligible except that the vessel was built with a construction-differential subsidy and the subsidy has been repaid); and

(C) the vessel is of a type described in section 53533 of this title for which the minimum down payment required by that section is 12.5 percent of the cost of the vessel.

(4) For a barge built without a construction-differential subsidy or for which the subsidy has been repaid, the principal amount of an obligation guaranteed under this part may not be more than 87.5 percent of the actual cost or depreciated actual cost.

(b) Prohibition on Uniform Percentage Limitations.--The Secretary may not establish a percentage under any provision of subsection (a) of this section that is to be applied uniformly to all guarantees or commitments to guarantee made under that provision.

(c) Security Involving Multiple Vessels.--The principal amount of an obligation having more than one vessel as security for the guarantee may not be more than the sum of the principal amount of obligations allowable for each vessel.

#### Sec. 54309. Amount of guarantees

(a) Amount Of Obligation Covered.--A guarantee or commitment to guarantee made under this part shall cover 100 percent of the amount of the principal and interest of an obligation.

(b) Amount Of Project Covered.--(1) If the obligor does not establish an escrow fund under subchapter II of this chapter, the Secretary may not guarantee the principal of an obligation in an amount greater than the amount determined by multiplying the percentage applicable under section of this title (or other applicable provision in chapters 545-548 of this title) by the amount paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of the vessel that is security for the guarantee.

(2) The amount paid by or for the account of an obligor shall be determined by the Secretary. The Secretary's determination is conclusive.

### SUBCHAPTER II--ESCROW FUNDS

#### Sec. 54321. Escrow fund

(a) General Authority.--If proceeds of an obligation guaranteed under this part are to be used to finance the construction, reconstruction, or reconditioning of a vessel that is to be security for a guarantee under this part, the Secretary may accept and hold in escrow, under an escrow agreement with the obligor, a portion of the proceeds of all obligations guaranteed under this part (whose proceeds are to be so used) which is equal to (1) the excess of the principal amount of all obligations whose proceeds are to be so used over 75 percent, or 87 1/2 percent, whichever is applicable under section 54308 of this part, paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of the vessel, and (2) the amount of interest on the amount under clause (1), if any, as the Secretary may require.

(b) Terms To Protect Government.--The escrow agreement shall contain terms the Secretary considers necessary to protect completely the interests of the United States Government.

(c) Security Involving Both Uncompleted and Delivered Vessels.--If the security for the guarantee of an obligation relates both to a vessel to be constructed, reconstructed, or reconditioned and to a delivered vessel, the principal amount of the obligation shall be prorated under this section under regulations prescribed by the Secretary.

(d) Investment.--The Secretary may invest and reinvest any part of an escrow fund in obligations of the Government with maturities appropriate to make the escrow fund available as required under the escrow agreement. Investment income shall be paid to the obligor when received.

#### Sec. 54322. Disbursement of escrow fund amounts

(a) General Requirements.--As provided in the escrow agreement, the Secretary shall disburse amounts in the escrow fund to--

(1) pay amounts the obligor is obligated to pay for--

(A) the construction, reconstruction, or reconditioning of a vessel that is security for the guarantee; and

(B) interest on the obligations;

(2) redeem the obligations under a refinancing guaranteed under this part;  
and

(3) pay any excess interest deposits to the obligor at times provided for in the escrow agreement.

(b) Payments Due Before End of Agreement.--If a payment becomes due under the guarantee before the end of the escrow agreement, the amount in the escrow fund at the time the payment becomes due, including realized income not yet paid to the obligor, shall be paid to the obligor.

(c) Payments Not Due Before End of Agreement.--(1) If a payment has not become due under the guarantee before the end of the escrow agreement, the balance of the escrow fund at the time of termination shall be disbursed to--

(A) prepay--

(i) the principal amount of all obligations whose proceeds are to be used to finance the construction, reconstruction, or reconditioning of the vessel used or to be used as security for the guarantee; less

(ii) the amount determined by multiplying the percentage applicable under section 54308(a) of this title (or other applicable

provision in chapters 545-549 of this title) by the actual cost of the vessel to the extent paid; and

(B) pay interest on that prepaid amount of principal.

(2) Any remaining balance of the escrow fund shall be paid to the obligor.

### SUBCHAPTER III--DEFAULT PROVISIONS

#### Sec. 54331. Rights of obligee

(a) Demands by Obligees.--Except as provided in subsection (c) of this section, if an obligor has continued in default for 30 days in the payment of principal or interest on an obligation guaranteed under this part, the obligee may demand that the Secretary pay the unpaid principal amount of the obligation and the unpaid interest on the obligation to the date of payment. The demand must be made within the earlier of--

(1) a period that may be specified in the guarantee or a related agreement;

or

(2) 90 days from the date of the default.

(b) Payments by Secretary.--(1) If a demand is made under subsection (a) of this section, the Secretary shall pay to the obligee the unpaid principal amount of the obligation and the unpaid interest on the obligation to the date of payment. Payment shall be made within the earlier of--

(A) a period that may be specified in the guarantee or a related agreement;

or

(B) 30 days from the date of the demand.

(2) The Secretary is not required to make payment under this subsection if, within the appropriate period under paragraph (1) of this subsection, the Secretary finds that the obligor was not in default or that the default was remedied before the demand.

(c) Assumption of Rights and Obligations Before Demand.--An obligee may not demand payment under this section if the Secretary, before the demand and on terms that may be provided in the obligation or a related agreement, has assumed the obligor's rights and duties under the obligation and any related agreement and made any payment in default. However, the guarantee of the obligation remains in effect after the Secretary's assumption.

#### Sec. 54332. Actions by Secretary

(a) General Authority.--On default under an obligation or related agreement between the Secretary and the obligor, the Secretary, on terms that may be provided in the obligation or agreement, may--

(1) assume the obligor's rights and duties under the obligation or agreement, make any payment in default, and notify the obligee of the default and the Secretary's assumption; or

(2) notify the obligee of the default.

(b) Demands by Obligees.--(1) If the Secretary proceeds under subsection (a)(2) of this section, the obligee may demand that the Secretary pay the unpaid principal amount of the obligation and the unpaid interest on the obligation. The demand must be made within the earlier of--

(A) a period that may be specified in the guarantee or a related agreement;

or

(B) 60 days from the date of the Secretary's notice.

(2) If a demand is made under paragraph (1) of this subsection, the Secretary shall pay to the obligee the unpaid principal amount of the obligation and the unpaid interest on the obligation to the date of payment. Payment shall be made within the earlier of--

(A) a period that may be specified in the guarantee or a related agreement;

or

(B) 30 days from the date of the demand.

(c) Continued Effect of Guarantee.--A guarantee of an obligation remains in effect after an assumption of the obligation by the Secretary.

#### Sec. 54333. Payments by Secretary and issuance of obligations

(a) Cash Payment Requirement.--Amounts required to be paid by the Secretary under section 54331 or 54332 of this title shall be paid in cash.

(b) Issuance of Obligations.--To make a payment required under section 54331 or 54332 of this title, the Secretary may issue obligations to the Secretary of the Treasury. The Secretary, with the approval of the Secretary of the Treasury, shall prescribe the form, denomination, maturity, and other terms (except the interest rate) of the obligations. The Secretary of the Treasury shall set the interest rate for the obligations, considering the current average market yield on outstanding marketable obligations of the United States Government of comparable maturities during the month before the obligations are issued.

(c) Purchase of Obligations.--The Secretary of the Treasury shall buy the obligations issued under this section. To buy the obligations, the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of securities issued under chapter 31 of title 31. Securities may be issued under chapter 31 to buy the obligations. The Secretary of the Treasury may sell obligations bought under this section. A redemption, purchase, or sale of the obligations by the Secretary of the Treasury is a public debt transaction of the Government.

#### Sec. 54334. Rights to secured property

(a) Acquisition of Security Rights.--When the Secretary makes a payment on, or assumes, an obligation under section 54331 or 54332 of this title, the Secretary acquires the rights under the security agreement with the obligor in the security held by the Secretary to guarantee the obligation.

(b) Use and Disposition of Secured Property.--The Secretary may complete, reconstruct, recondition, renovate, repair, maintain, operate, charter, or sell any property acquired under a security agreement with an obligor without regard to any other law on the acquisition, handling, or disposition of property by the United States Government. The terms of a sale shall be as approved by the Secretary. The Secretary also may place a vessel acquired under this section in the National Defense Reserve Fleet.

#### Sec. 54335. Actions against obligor

(a) General Authority.--For a default under a guaranteed obligation or related agreement, the Secretary may take any action against the obligor or another liable party that the Secretary considers necessary to protect the interests of the United States Government. A civil action may be brought in the name of the Government or the obligee. The obligee shall make available to the Government all records and evidence necessary to prosecute the action.

(b) Title, Possession, and Purchase.--(1) The Secretary may--

(A) accept a conveyance of title to, and possession of, property from the obligor or another party liable to the Secretary; and

(B) purchase the property for an amount not greater than the unpaid amount of the principal and interest on the obligation.

(2) If, through the sale of property, the Secretary receives an amount of cash greater than the unpaid principal amount of the obligation, the unpaid interest on the obligation, and the expenses of collecting those amounts, the Secretary shall pay the excess to the obligor.

### CHAPTER 545--OCEAN THERMAL ENERGY CONVERSION FACILITIES AND PLANTSHIPS

Sec.

- 54501. Guarantee of obligations.
- 54502. Certification of reasonableness of risk.
- 54503. Determination of economic soundness.
- 54504. Amount of obligations.
- 54505. OTEC Demonstration Fund.
- 54506. Issuance and payment of obligations.
- 54507. Taxation of interest.

Sec. 54501. Guarantee of obligations

(a) General Authority.--(1) Under chapter 543 of this title, the Secretary may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation that aids in--

(A) financing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, or reconditioning of an ocean thermal energy conversion facility or plantship; or

(B) refinancing an existing obligation (regardless of whether guaranteed under this chapter) issued for a purpose described in clause (A) of this paragraph, including a short-term obligation incurred to obtain temporary capital with the intention of refinancing.

(2) A guarantee may not be made under paragraph (1)(A) of this subsection more than one year after delivery of the facility or plantship (or redelivery if it was reconstructed or reconditioned) unless the proceeds of the obligation are used to finance the construction, reconstruction,, or reconditioning of a vessel or of facilities or equipment related to marine operations.

(b) Application of Chapter 543.--A guarantee or commitment to guarantee under this chapter is subject to chapter 543 of this title, except to the extent this chapter contains a contrary provision.

(c) Program Limit.--This chapter may be used to guarantee obligations for a total of not more than 5 separate facilities and plantships or a demonstrated 400 megawatt capacity, whichever comes first.

Sec. 54502. Certification of reasonableness of risk

(a) General Authority.--The Secretary may guarantee or make a commitment to guarantee an obligation under this chapter only if the Secretary of Energy, in consultation with the Secretary, certifies to the Secretary that, for the ocean thermal energy conversion facility or plantship for which the guarantee or commitment to guarantee is sought, there

is sufficient guarantee of performance and payment to lower the risk to the United States Government to a reasonable level.

(b) Considerations.--In deciding whether to certify a project under this section, the Secretary of Energy shall consider--

(1) the successful demonstration of the technology to be used in the facility at a scale sufficient to establish the likelihood of technical and economic viability in the proposed market; and

(2) the need of the United States to develop new and renewable sources of energy and the benefits to be realized from the building and successful operation of the facility or plantship.

#### Sec. 54503. Determination of economic soundness

The required determination of economic soundness under section 54306 of this title applies to a guarantee or commitment to guarantee for that part of an ocean thermal energy conversion facility or plantship not to be supported with amounts appropriated by the United States Government.

#### Sec. 54504. Amount of obligations

(a) Percentage Limitation.--The total principal amount of an obligation guaranteed under this chapter may not be more than 87.5 percent of--

(1) the actual cost or depreciated actual cost of the ocean thermal energy conversion facility or plantship; or

(2) if the facility or plantship is supported with appropriated amounts, the total principal amount of that part of the actual cost or depreciated actual cost for which the obligor is obligated to secure financing under the agreement between the obligor and the Secretary of Energy or head of another Government agency.

(b) Prohibition on Uniform Percentage Limitations.--The Secretary may not establish a percentage under subsection (a) of this section that is to be applied uniformly to all guarantees or commitments to guarantee made under this chapter.

#### Sec. 54505. OTEC Demonstration Fund

(a) General.--There is a special subaccount in the account established under section 54106(a)(1) of this title, known as the OTEC Demonstration Fund.

(b) Use and Operation.--The OTEC Demonstration Fund shall be used for obligation guarantees authorized under this chapter that do not qualify under chapter 543 of this title. Except as otherwise provided in this chapter, the OTEC Demonstration Fund